



POSITION ON PROPOSED LEGISLATION

BILL: HB 945 – Criminal Procedure – Sentencing and Disposition – Community Impact Statements

POSITION: OPPOSED

DATE: February 25, 2020

HB 945 is vague, likely to lead to unfair prejudice by putting popular pressure on judges, and will likely interject passion, rumor and misinformation into an otherwise carefully cabined process where only the most relevant and probative information is considered.

Vague & Unworkable

HB 945 fails to define several key terms, including “community,” “impacted by the crime,” and “community representative.”

“Community” has a wide variety of connotations ranging from geographic (such as state, county, or neighborhood), to cultural and religious, to groups of people with shared interests or lifestyles (such as hobbies, professions, or political beliefs). HB 945 neither defines “community” nor gives the court any guidance about how to determine what sort of community is permitted to give a “community impact statement.” The extent of the overbreadth becomes clear when considering that all of the above categories can, and often do, apply to one single individual. With neither definition nor process, HB 945 could require courts to consider community impact statements not simply from people living in the neighborhoods where crimes happen, but also from members of any number or kind of self-interest groups who may have no real connection to the victim or actual experience of the crime itself.

The proposed legislation also fails to define “impacted by a crime.” To the extent that it is natural for people to fear crime, people often fear crime wherever and whenever it happens, whether it is happening close or far away, and whether it personally involves them or anyone they know. What sort of impact would a given community need to have experienced in order for its statement to be properly considered and given weight? Financial impact, safety impact, emotional impact? Is the court expected to simply take a representative’s word for what they are saying? Are parties to engage in an

adversarial process to argue whether a given community is genuinely or sufficiently impacted?

HB 945 also fails to give any guidance to courts and citizens alike regarding how to determine a “representative of a community.” Do individual members of a particular community need to create an organization and elect a spokesperson? Is the judge expected to inquire of the details of such arrangements, if any, in order to determine their genuineness or authenticity? What happens when several different members of the same community offer differing viewpoints about how any one incident impacts their community? What happens when community members contest whether someone represents them?

Degrades the Administration of Justice and Invites Popular Pressure Into the Courtroom

Unlike victim impact statements, HB 945 sets no limits on what can be contained in community impact statements. Such statements are likely to be based on brief and selective commercial news reports, random social media posts, or personal or neighborhood hearsay. As such the statements will rarely account for all the relevant facts and will usually go beyond actual first-hand knowledge or experience. Inflammatory passion and opinions could take the place of facts, to the detriment of the fair administration of justice. Popular outrage, opinion or mere misinformation will be directed at the defendant, and indeed towards all the courtroom stakeholders, especially judges. Whatever its merits, popular opinion and pressure does have an important place in our society and government – in the *political* and *legislative* branch - but not in the judicial branch.

Not a Natural Extension of Victim Impact Statements

The proposed legislation indicates that a community representative “may submit a community impact statement” and that if a representative does, “the court *shall* consider the community impact statement.” While many cases have affirmed the propriety of *victim* impact statements during sentencing, none have affirmed a similar process as to other members of the community. Victim impact statements are expressly supported by the Maryland Declaration of Rights and given a substantive and procedural framework in the Criminal Procedure Article. The victim is permitted either to testify or to submit a written impact statement. In most cases, when a defendant elects to take a plea, he or she explicitly waives the right to confront and cross examine any witnesses – including the victim. On the other hand, in contested cases, the current law allows the defense to cross-examine a victim at the impact-statement-stage. None of these legal foundations or processes exist for community statements as drafted in this bill – this is

not a logical or innocuous extension of existing law and the one should not be claimed as the basis for the other.

Directly Inapposite to Juvenile Confidentiality

The Juvenile Causes Act denies access to the general public to court files, and most juvenile court proceedings. Unlike victims, who are specifically exempted from many of those provisions, there is no provision entitling community members to be present at or have information about juvenile proceedings.

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For all of the above-stated reasons, we urge an unfavorable vote on HB 945.